

REMARKS

In the Office Action mailed May 12, 2008 the Office noted that claims 1-13 were pending and rejected claims 1-13. Claims 1 and 9 have been amended, no claims have been canceled, claim 14 has been added, and, thus, in view of the foregoing claims 1-14 remain pending for reconsideration which is requested. No new matter has been added. The Office's rejections are traversed below.

REJECTIONS under 35 U.S.C. § 112

Claims 1-13 stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. In particular, the Office asserts that certain features lack antecedent basis. The Applicant has amended the claims consistent with the comments of the Office.

Withdrawal of the rejections is respectfully requested.

REJECTIONS under 35 U.S.C. § 102

Claims 1, 3-4 and 9-11 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Jung, U.S. Patent No. 6,254,385. The Applicants respectfully disagree and traverse the rejection with an argument.

Jung discusses an enhanced image acquisition device

able to catch an image of the face of a patient and, if needed, of a color calibration chart 404 placed nearby the patient's face (see figures 26 and col., lines 54-62). The image acquisition device has advanced functions in determination of optical characteristics, including colors.

It is further discussed that the chart 404 is advantageously adapted to be positioned inside the patient's mouth (see col. 34, lines 35-41). It is specifically intended to catch a single image wherein teeth and chart 404 are visible. This enables to keep memory of colors of teeth during a comparison with a color calibration chart.

On pages 2 and 3 of the Office Action, it is asserted that col. 32, lines 37-39; col. 33, lines 54-65; and Fig. 26 disclose "inputting and freezing on a screen (7) a colour image (7a) of this set-of-teeth element (3), filming the colour coding ring (9) and displaying on the screen (7) the image (7b) of at least one sample ($9_1, 9_2, 9_3 \dots 9_n$), so that this image (7b) lies side by side with the frozen image (7a) of the set-of-teeth element," as in claim 1.

However, col. 34, lines 35-41 state

It should be further noted that color calibration chart 404 may be specifically adapted (size, form and constituent materials, etc.) to be positioned inside of the patient's mouth to be **placed near the tooth or teeth being examined**, so as to be **subject to the same or nearly the same ambient lighting and environmental conditions**, etc., as is the tooth or teeth being examined. [Emphasis added]

Thus, Jung discusses that the color calibration chart 404 is

adapted to fit within the patient's mouth and that the picture of the teeth is taken at the same time as the picture of the color calibration chart. Thus, it cannot be stated that there are separate images (7a) and (7b) as in the present claims. Further, it would not have been implicit to use separate images as the reference specifically states that it wants the image taken using the same environmental conditions.

Claim 9 while of different statutory type and breadth, has features similar to claim 1. Therefore, for at least the reasons discussed above, claims 1 and 9 and the claims dependent therefrom are not anticipated by Jung.

As Jung does not disclose or imply two separate images it further does not disclose "that the two images (7a, 7b) are joined to each other without separation," as in claim 4.

Withdrawal of the rejections is respectfully requested.

REJECTIONS under 35 U.S.C. § 103

Claims 2, 5-8 and 12-13 stand rejected under 35 U.S.C. § 103(a) as being obvious over Jung. The Applicants respectfully disagree and traverse the rejection with an argument.

As regards claim 2, as discussed above, there is only a single image in Jung. This changing a second image of a color coding ring is not disclosed. Therefore, "samples ($9_1, 9_2, 9_3 \dots 9_n$) of the colour coding ring (9) are made to advance on the screen so as to allow the user to visually compare the frozen image (7a)

of the set-of-teeth element (3) with the image (7b) of the sample," as in claim 2 are not taught.

The claims are also allowable as being dependent from allowable independent claims. For at least the reasons discussed above, Jung does not render obvious the features of the claims.

Withdrawal of the rejections is respectfully requested.

NEW CLAIM

Claim 14 is new. Support for claim 14 may be found, for example, in Fig. 2 and the supporting text of the Specification. The Applicant submits that no new matter has been added. The prior art fails to disclose that the image of the colour ring and the teeth are acquired separately.

SUMMARY

It is submitted that the claims satisfy the requirements of 35 U.S.C. §§ 112, 102 and 103. It is also submitted that claims 1-14 continue to be allowable. It is further submitted that the claims are not taught, disclosed or suggested by the prior art. The claims are therefore in a condition suitable for allowance. An early Notice of Allowance is requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional

fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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A handwritten signature in dark ink, appearing to read 'James J. Livingston, Jr.', is written over a horizontal line.

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